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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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LORA JOLLIFF, an individual;) CASE NO.:
vs.) 2:21-cv-00098-GMN-NJK
Plaintiff,)
NEVADA CVS PHARMACY, L.L.C., a domestic)
limited-liability company; CVS HEALTH)
SOLUTIONS LLC, a foreign limited-liability)
company; CVS PHARMACY, INC., a foreign)
corporation; DOE & ROE MAINTENANCE)
EMPLOYEES; DOE & ROE MAINTENANCE)
COMPANIES; DOE & ROE EMPLOYEES; DOE)
& ROE EMPLOYERS; DOE OWNERS I-V; ROE)
OWNERS I-V; ROE EMPLOYERS I-V; DOES I-)
V; and ROE COMPANIES I-V,)
Defendants.)

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(PROPOSED) PROTECTIVE ORDER

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The Court finds that the discovery sought in this Action is likely to require the production
of certain confidential health care, business, commercial, personnel, and financial information, and
that the parties have a legitimate need to protect the confidentiality of such information. The Court
hereby ORDERS, ADJUDGES, and DECREES as follows:

ALVERSON TAYLOR & SANDERS
LAWYERS
6605 GRAND MONTECITO PKWY STE 200
LAS VEGAS, NV 89149
(702) 384-7000

1 **I. PURPOSES AND LIMITATIONS**

2 Defendant has

3 As ~~the parties have~~ represented that discovery in this action is likely to involve production
 4 of confidential, proprietary, or private information for which special protection from public
 5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted,
 6 this Court enters the following Protective Order. This Order does not confer blanket protections
 7 on all disclosures or responses to discovery. The protection it affords from public disclosure and
 8 use extends only to the limited information or items that are entitled to confidential treatment under
 9 the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order
 10 does not entitle the parties to file confidential information under seal. Rather, when the parties
 11 seek permission from the court to file material under seal, the parties must comply with Local Rule
 12 IA 10-5 and with any pertinent orders of the assigned Magistrate Judge.

13 **A. GOOD CAUSE STATEMENT**

14 Defendant's

15 In light of the nature of the claims and allegations in this case and ~~the parties'~~
 16 representations that discovery in this case will involve the production of confidential records, and
 17 in order to expedite the flow of information, to facilitate the prompt resolution of disputes over
 18 confidentiality of discovery materials, to adequately protect information the parties are entitled to
 19 keep confidential, to ensure that the parties are permitted reasonable necessary uses of such
 20 material in connection with this action, to address their handling of such material at the end of the
 21 litigation, and to serve the ends of justice, a protective order for such information is justified in
 22 this matter.

23 The parties shall not designate any information/documents as confidential without a good
 24 faith belief that such information/documents have been maintained in a confidential, non-public
 25 manner, and that there is good cause or a compelling reason why it should not be part of the public
 26 record of this case. Items designated as CONFIDENTIAL are in fact a trade secret or contain
 27 private financial, proprietary, or business information that would not ordinarily be accessible to
 28 the public.

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1 **II. DEFINITIONS**

2 2.1 Action: LORA JOLLIFF vs. NEVADA CVS PHARMACY, L.L.C.

3 2.2 Challenging Party: A Party or Non-Party that challenges the designation of information or
items under this Order.

4 2.3 “CONFIDENTIAL” Information or Items: Private financial, proprietary, or business
information that would not ordinarily be accessible to the public (regardless of how it is generated,
stored or maintained), or tangible things that qualify for protection under Federal Rule of Civil
Procedure 26(c), and as specified above in the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

6 2.5 Designating Party: A Party that designates information or items that it produces in
disclosures or in responses to discovery as “CONFIDENTIAL.”

7 2.6 Disclosure or Discovery Material: All items or information, regardless of the medium or
manner in which it is generated, stored, or maintained (including, among other things, testimony,
transcripts, and tangible things), that are produced or generated in disclosures or responses to
discovery in this matter.

8 2.7 Expert: Individual or entity with specialized knowledge or experience in a matter pertinent
to the litigation who has been retained by a Party to serve as an expert witness or as a consultant
in this Action.

9 2.8 House Counsel: Attorneys who are employees of a party to this Action. House Counsel
does not include Outside Counsel of Record or any other outside counsel.

10 2.9 Non-Party: Any natural person, partnership, corporation, association, or other legal entity
not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but
are retained to represent or advise a party to this Action and have appeared in this Action on behalf
of that party or are affiliated with a law firm which has appeared on behalf of that party and
includes support staff.

12 24 ...

1 2.11 Party: Any party to this Action, including all of its officers, directors, employees,
 2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3 2.12 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in
 4 this Action.

5 2.13 Professional Vendors: Individuals or entities that provide litigation support services (e.g.,
 6 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 7 storing, or retrieving data in any form or medium) and their employees and subcontractors.

8 2.14 Protected Material: Any Disclosure or Discovery Material that is designated as
 9 “CONFIDENTIAL.”

10 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing
 11 Party.

12 **III. SCOPE**

13 The protections conferred by this Order cover not only Protected Material (as defined
 14 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
 15 excerpts, summaries, or compilations of Protected Material; and (3) any deposition testimony,
 16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material,
 17 other than during a court hearing or at trial.

18 Any use of Protected Material during a court hearing or at trial shall be governed by the
 19 Court
 20 orders of the ~~presiding magistrate~~. This Order does not govern the use of Protected Material during
 21 a court hearing or at trial.

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IV. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

V. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions), that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies on the record, before the close of the deposition as protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
 2 qualified information or items does not, standing alone, waive the Designating Party's right to
 3 secure protection under this Order for such material. Upon timely correction of a designation, the
 4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
 5 with the provisions of this Order.

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 8 confidentiality at any time that is consistent with the Court's Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under
 10 ~~Local Court Rule 16-1(e)~~. ~~Local Rule 26-6(c)~~.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating
 12 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 14 sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation,
 15 all parties shall continue to afford the material in question the level of protection to which it is
 16 entitled under the Producing Party's designation until the Court rules on the challenge.

17 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 19 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
 20 defending, or attempting to settle this Action. Such Protected Material may be disclosed only to
 21 the categories of persons and under the conditions described in this Order. When the Action has
 22 been terminated, a Receiving Party must comply with the provisions of Section 13 below.

23 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
 24 manner that ensures that access is limited to the persons authorized under this Order.

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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
2 court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees
5 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
6 for this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the Receiving
8 Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement
11 to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom
15 disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a custodian or other
18 person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom
20 disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign
21 the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit A hereto; and (2)
22 they will not be permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” attached as Exhibit A, unless otherwise agreed
24 by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
exhibits to depositions that reveal Protected Material may be separately bound by the court reporter
and may not be disclosed to anyone except as permitted under this Protective Order; and

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(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must: (1) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order unless prohibited by law; (2) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and (3) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission, or unless otherwise required by the law or court order. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

• • •

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If a Non-Party represented by counsel fails to commence the process called for by Local Rule 26-6(c) ~~Local Court Rule 16-1(c)~~ within 14 days of receiving the notice and accompanying information or fails contemporaneously to notify the Receiving Party that it has done so, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If an unrepresented Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court unless otherwise required by the law or court order. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

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1 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this Protective Order, the
 4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
 6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 7 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 Be Bound” that is attached hereto as Exhibit A.

8 **X1. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 9 PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 11 produced material is subject to a claim of privilege or other protection, the obligations of the
 12 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 13 is not intended to modify whatever procedure may be established in an e-discovery order that
 14 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
 15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 16 communication or information covered by the attorney-client privilege or work product protection,
 17 the parties may incorporate their agreement into this Protective Order.

18 **XII. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
 20 modification by the Court in the future.

21 12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to
 22 object to disclosing or producing any information or item on any ground not addressed in this
 23 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence
 24 of any of the material covered by this Protective Order.

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12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must
 1 comply with Local Rule IA 10-5 and with any pertinent orders of the assigned Magistrate Judge.
 2 If a Party's request to file Protected Material under seal is denied by the court, then the Receiving
 3 Party may file the information in the public record unless otherwise instructed by the court.

4 **XIII. FINAL DISPOSITION**

5 After the final disposition of this Action, as defined in Section 4, within 60 days of a written
 6 request by the Designating Party, each Receiving Party must return all Protected Material to the
 7 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
 8 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
 9 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
 10 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
 11 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
 12 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
 13 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
 14 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 15 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
 16 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 17 reports, attorney work product, and consultant and expert work product, even if such materials
 18 contain Protected Material. Any such archival copies that contain or constitute Protected Material
 19 remain subject to this Protective Order as set forth in Section 4.

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1 Any violation of this Order may be punished by any and all appropriate measures including,
2 without limitation, contempt proceedings and/or monetary sanctions.

3 Respectfully submitted by:

4 ALVERSON TAYLOR & SANDERS

5 LEANN SANDERS, ESQ.
6 Nevada Bar No. 000390
7 KARIE WILSON, ESQ.
8 Nevada Bar No. 007957
9 6605 Grand Montecito Pkwy., Suite 200
10 Las Vegas, NV 89149
11 *Attorneys for Defendants*

12 **ORDER**

13 Pursuant to Defendant's Motion for Protective Order, and good cause appearing therefore,
14 IT IS SO ORDERED.

15 Dated: February 14, 2022

16 
17 United States Magistrate Judge

18 **ALVERSON TAYLOR & SANDERS**
19 **LAWYERS**
20 **6605 GRAND MONTECITO PKWY STE 200**
21 **LAS VEGAS, NV 89149**
22 **(702) 384-7000**

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24

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, have read in its entirety and understand the Protective Order that was issued by the United States District Court, District of Nevada on _____, 202_____, in the case of *LORA JOLLIFF, individually v. NEVADA CVS PHARMACY, LLC*, Case No. 2:21-CV-00098-GMN-NJK. I agree to comply with and to be bound by all terms of this Protective Order and I understand and acknowledge that failure to do so comply could expose me to sanctions and punishment in the nature of contempt. I agree that I will not disclose in any manner any information or item that is subject to this Protective Order that any person or entity except in strict compliance with the provisions of this Order. Further, I agree that I will not sell, advertise or publicize, or offer to do any of the aforementioned, that I have obtained any Confidential Information subject to this Protective Order. At the conclusion of this matter, I will return all Confidential Information which came into my possession to counsel for the party from whom I received the Confidential Information, or I will destroy those materials. I understand that even after the case, or my participation in the case, has ended, all Confidential Information remains protected pursuant to the terms of this Order.

Pursuant to the laws of the State of Nevada, I certify under the penalty of perjury that the foregoing is true and correct.

Date: _____

City and State where signed: _____

Printed name: _____

Address: _____

Signature: _____

DATED this ____ day of _____, 202__.